

**MEMORANDUM
UNITED STATES DISTRICT COURT**

FILED

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CLERK

Date: November 14, 2000
To: Counsel
Re: South Dakota Farm Bureau, et al., v. Mark Barnett et al., CIV 99-3018
From: Judge Charles B. Kommann

Plaintiffs filed an amended complaint on September 27, 2000, alleging that Amendment E to the South Dakota Constitution, Art. XVII, § 21, should be declared unconstitutional and unenforceable based upon the following claims:

- I. Violation of the Commerce Clause
- II. Violation of the Privileges and Immunities Clause
- III. Violation of the Equal Protection Clause
- IV. Violation of the Due Process Clause
- V. Violation of 42 U.S.C. § 1983

The state defendants filed a motion for summary judgment on October 16, 2000, claiming that the claims brought by the utility plaintiffs are not ripe for review and that a similar Nebraska amendment has already been upheld by the United States Court of Appeals for the Eighth Circuit as not in violation of the Equal Protection Clause. The Farm Bureau plaintiffs and the utility plaintiffs filed an opposition to the state defendants' statement of material facts on November 8, 2000, the last day to do so. They also submitted over-length briefs. The Clerk of Courts notified the plaintiffs that their briefs would be retained, but not filed, until they obtained leave of Court to file over-length briefs. On November 13, 2000, the Farm Bureau plaintiffs filed a motion to file a responsive brief in excess of 25 pages. Also on November 13, 2000, the utility plaintiffs filed a motion to file a responsive brief in excess of 25 pages and a request that any delay in filing their brief due to the filing of their motion be excluded from the calculation of time within which their brief should have been filed. Both motions are filed well beyond the time period for responding to the motion for summary judgment but both have been granted today.

The intervenors filed a motion for summary judgment on October 16, 2000, claiming that Farm Bureau and the Sheep Growers Association do not have standing, that Amendment E does not affect forward contracts, and that Amendment E contains a saving grandfather provision. On November 8, 2000, the Farm Bureau plaintiffs filed a 20 page brief in opposition on the issue of standing only. On that same date the Farm Bureau plaintiffs also filed a 23 page brief in opposition on the issues of forward contracting and the grandfather clause. The Farm Bureau plaintiffs did not seek and were not granted permission to split the issues and file two separate briefs. What they have done would circumvent the local rules regarding the length of briefs. Counsel may not file a separate brief on each issue. No reply brief has been filed and none is due until November 20, 2000, the date of the telephonic pre-trial conference.

I do not think we can accomplish much at the pre-trial conference scheduled for November 20 but we will conduct it.

A handwritten signature in black ink, reading "Charles B. Kornmann". The signature is written in a cursive, flowing style.

CHARLES B. KORNMANN
UNITED STATES DISTRICT JUDGE
United States Courthouse
102 Fourth Avenue SE, Suite 408
Aberdeen, SD 57402

cc: Clerk's file